

FILED '08 OCT 28 16:46 USDC-ORP

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

JAVIER VAGE,

CV. 06-938 PK

Petitioner,

OPINION AND ORDER

v.

BRIAN BELLEQUE,

Respondant.

REDDEN, Judge:

Magistrate Judge Paul Papak issued Findings and Recommendation (#50) on October 7, 2008, recommending that petitioner's Petition for Writ of Habeas Corpus (#2) be denied.. The matter is now before this court pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

When either party objects to a Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of the issues. 28 USC § 636(b)(1)(C); *McDonnell Douglas Corp. v. Commodore Business Machines*, 656 F2d 1309, 1313 (9th Cir 1981), *cert. denied*, 455 US 920 (1982).

OPINION AND ORDER- 1

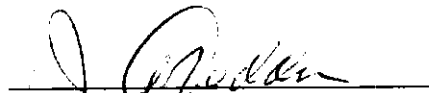
Petitioner filed timely objections to Judge Papak's Findings and Recommendation. I have, therefore, given the issues *de novo* review.

Petitioner notes that Judge Papak did not rule on his Motion to Amend the Habeas Petition, and addressed the merits of petitioner's claims instead. Petitioner contends that, to the extent that the Findings and Recommendation constitute a denial of the Motion to Amend, he objects. Petitioner asks the court to "constructively amend" the petition "to include counsel's failure to object to the consecutive sentences," or, in the alternative, for "leave to file a First Amended Petition adding this claim." Petitioner's Memorandum, pg. 8, fn 2. Judge Papak thoroughly analyzed whether petitioner's trial counsel was constitutionally ineffective when he failed to object to the trial court's imposition of consecutive sentences for his Assault, Unlawful Use of a Firearm, and Felon in Possession of a Firearm convictions. Findings and Recommendation, pg. 12-15.

After *de novo* review, I agree with Judge Papak's analysis and conclusion. Accordingly, I adopt the Findings and Recommendation (# 50). The Petition for Writ of Habeas Corpus (# 2) is denied and the case is dismissed.

IT IS SO ORDERED.

Dated this 28 day of October, 2008.


James A. Redden
United States District Judge